

## **EXHIBIT A**

Teleconference

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, :  
Plaintiff, :  
: :  
v. : Civil Action No.  
: 05-441-JJF  
INTEL CORPORATION, :  
Defendant. : :

Teleconference in the above matter taken  
pursuant to notice before Gloria M. D'Amore, Registered  
Professional Reporter, in the law offices of Blank Rome,  
LLP, 1201 N. Market Street, Suite 800, Wilmington,  
Delaware, on Thursday, November 16, 2006, beginning at  
approximately 11:05 a.m., there being present:

BEFORE:

THE HONORABLE VINCENT J. POPPITI

APPEARANCES:

O'MELVENY & MYERS  
BY: CHARLES DIAMOND, ESQUIRE  
and  
LINDA J. SMITH, ESQUIRE  
1999 Avenue of the Stars  
Los Angeles, California 90067  
Attorneys for AMD

CORBETT & WILCOX  
Registered Professional Reporters  
230 N. Market Street      Wilmington, DE 19801

Teleconference

Page 2

1 APPEARANCES CONTINUED:

2

RICHARDS, LAYTON & FINGER  
BY: FREDERICK L. COTTRELL, III, ESQUIRE  
and  
CHAD M. SHANDLER, ESQUIRE  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Attorneys for AMD

7

POTTER, ANDERSON & CORROON  
BY: RICHARD L. HORWITZ, ESQUIRE  
1313 N. Market Street, 6th Floor  
P.O. Box 951  
Wilmington, Delaware 19899  
Attorney for Intel

10

On behalf of GIBSON, DUNN & CRUTCHER, LLP  
BY: DANIEL FLOYD, ESQUIRE  
Attorney for Intel

12

On behalf of HOWREY  
DARREN BERNHARDT, ESQUIRE  
Attorney for Intel

14

On behalf of BINGHAM, McCUTCHEN  
RICHARD RIPLEY, ESQUIRE  
Attorney for Intel

16

PRICKETT, JONES & ELLIOTT  
BY: JAMES L. HOLZMAN, ESQUIRE  
1310 King Street  
Wilmington, Delaware 19801  
Attorney for Plaintiff, Class

19

On behalf of Cohen Milstein  
DAN SMALL, ESQUIRE  
Attorney for Plaintiff, Class

21

22

23

24

Teleconference

Page 3

1 JUDGE POPPITI: Please do a roll call.

2 MR. COTTRELL: In Wilmington for AMD is  
3 Fred Cottrell and Chad Shandler, and, of course, on the  
4 West Coast from O'Melveny and Myers is Chuck Diamond and  
5 Linda Smith.

6 JUDGE POPPITI: Next, please.

7 MR. FLOYD: Dan Floyd from Gibson, Dunn  
8 and Crutcher for Intel.

9 JUDGE POPPITI: Next.

10 MR. HORWITZ: Your Honor, it's Rich  
11 Horwitz in Wilmington for Intel, as well, with Potter,  
12 Anderson. And Darren Bernhardt from --

13 JUDGE POPPITI: Mr. Horwitz, would you  
14 go back over that. There was some interference on the  
15 line. I didn't hear what you said.

16 MR. HORWITZ: Rich Horwitz from Potter  
17 Anderson for Intel. And also on the line for Intel is  
18 Daron Bernhardt from Howrey and Rick Ripley from Bingham,  
19 McCutchen.

20 MR. HOLZMAN: Jim Holzman at Prickett,  
21 Jones for the plaintiff, Class, along with Dan Small of  
22 the Cohen Milstein firm in Washington.

23 JUDGE POPPITI: Thank you. Does that  
24 round out everyone?

## Teleconference

Page 4

1 Mr. Cottrell, are you taking the lead  
2 today?

3 MR. COTTRELL: I think Chuck had a few  
4 things, and then we can add, if necessary.

5 MR. DIAMOND: Judge, there were three  
6 issues that it seemed appropriate to raise with you this  
7 morning.

8 One is the status of the MDA responses  
9 that both AMD and Intel have been receiving from parties  
10 whose information we may be producing for one another.

13 JUDGE POPPITI: Yes. I have that.

14 MR. DIAMOND: -- dated November 13th and  
15 what to do with that during the pendency of the currently  
16 brief Intel -- I'm sorry -- our motion to compel foreign  
17 conduct discovery.

18 And then, the third issue is sort of an  
19 update as to where we stand with third-party  
20 negotiations. You wanted to be able to monitor that.

21 JUDGE POPPITI: Yes.

22 MR. DIAMOND: So, I thought we ought to  
23 give you sort of a thumbnail sketch of where we stand.

24 JUDGE POPPITI: That's great.

## Teleconference

Page 5

1 MR. DIAMOND: We can do those in any  
2 order you prefer.

3 JUDGE POPPITI: You call off the order,  
4 follow the order that you suggested. I'm fine with that.

5 MR. DIAMOND: Let me start with the  
6 MDA's then. I think there were about a half dozen --  
7 four to a half dozen letters that were sent to you in  
8 total. We received about a dozen or so letters from  
9 recipients of our notification letter.

10 JUDGE POPPITI: Yes.

11 MR. DIAMOND: We have resolved those  
12 issues with respect to everyone who has written to you.

13 JUDGE POPPITI: That's great.

14 MR. DIAMOND: At least we think so.

15 The last one we provided information to  
16 about 10 days ago, we haven't heard anything further, and  
17 they haven't returned calls or E-mails. So, I think that  
18 one is resolved, as well.

24 JUDGE POPPITI: Yes.

## Teleconference

Page 6

1 MR. DIAMOND: He has written on behalf  
2 of his clients, HP and an HP subsidiary, objecting to the  
3 way that AMD and Intel proposes to proceed and request  
4 the right to inspect any document that is or contains any  
5 materials subject to a nondisclosure agreement with HP.

6 For the reasons that we've discussed,  
7 particularly with a company like HP, that will be so  
8 dominant in both our corporate vials, that's, for  
9 practical reasons, a nonstarter.

10 We have conveyed that to both  
11 Mr. Holstein and the client level to the inside counsel's  
12 office and are in discussions. I don't know where Intel  
13 stands on that.

14 But we are desperate to get this  
15 document exchange rolling. And I think we need to, or I  
16 think you need to sort of set a fish or cut bait time  
17 very soon, perhaps, as early as next week that -- you  
18 know -- to the extent we haven't worked out any problems  
19 with any of the recipients that we tee that up in front  
20 of you and get it resolved.

21 I'm becoming increasingly concerned  
22 about the April document exchange cutoff, if we are  
23 continued to be delayed by these third-party objections,  
24 which ultimately you will have to resolve, and we don't

Teleconference

Page 7

1 view as well taken in view of the protective order.

2 It is probably useful to hear from Intel  
3 as to where they stand.

4 JUDGE POPPITI: I agree.

5 MR. BERNHARDT: This is Daron Bernhardt,  
6 Your Honor.

7 I think, generally, we would be  
8 amendable to some sort of cutoff date. I rather not do  
9 it next week just because of the holiday, but if we can  
10 do it the end of the following week.

11 We have not started the negotiations  
12 with HP because I think we sent our letter after AMD did,  
13 and we just received Mr. Holstein's letter.

14 We would hope to be able to do this  
15 through some sort of negotiated resolution. Most of the  
16 third parties have not raised any objection to the  
17 production of documents given that there is a protective  
18 order in place. And we are going to try to engage with  
19 HP to see if we can alleviate their concerns either by  
20 agreeing to give them some sort of truncated list, some  
21 word searches or something, or a date cutoff, or getting  
22 them to have a better understanding of the protections  
23 the protective order provides.

24 But in any event, if we could have a

Teleconference

Page 8

1 little bit of time to do that, I'm optimistic that we  
2 would be able to resolve it with them short of a motion.

3 If there has to be a motion, there has to be a motion.

4 I agree with what Mr. Diamond has said,  
5 that for all practical purposes, having to identify every  
6 single document from every third party just would not be  
7 workable for either AMD or Intel.

8 JUDGE POPPITI: Any other comments about  
9 that issue?

10 Well, it seems to me that if next week  
11 doesn't work because of the holiday, certainly pick any  
12 day in the following week that makes sense to the both of  
13 you to permit the amount of discussion, dialogue,  
14 negotiation that you need. And then, once that date  
15 passes, permit there to be motion practice on the issue.

16 And I'm happy to let you pick that date.

17 MR. DIAMOND: This is Mr. Diamond.

18 In light of Mr. Bernhardt's comments, I  
19 don't know that we need a hard-and-fast date. I think if  
20 you tell us this needs to be resolved by the end of the  
21 week of November 27th, if we reach impasse with HP  
22 earlier than that, we're just going to tee this up and it  
23 will get resolved when it gets resolved.

24 We'll file on Monday the 27th, but I

Teleconference

Page 9

1 don't know that you'll want, necessarily, to wait until  
2 Friday, December 1st. If we know we are not going to get  
3 anywhere, we will go ahead and tee this up.

4 JUDGE POPPITI: Then here is what I  
5 would --

6 MR. BERNHARDT: Your Honor, could I just  
7 mention one other point. This is Mr. Bernhardt again.

8 JUDGE POPPITI: Yes, please.

9 MR. BERNHARDT: I should have mentioned  
10 this before.

11 As a result of getting AMD's MDA list  
12 and some additional work that we have done, we may have a  
13 few more letters that have to be sent out. I just want  
14 to alert the court to that. There ought not to be too  
15 many and, hopefully, they won't raise objections.

16 But given that we have been given two  
17 weeks' time to get that notice to get a response back for  
18 every third party, the last week of November may not work  
19 for us. Certainly, for those where the letters have  
20 already been sent, it would work.

21 JUDGE POPPITI: Mr. Diamond.

22 MR. DIAMOND: Unless --

23 JUDGE POPPITI: We don't want to be  
24 doing these piecemeal.

## Teleconference

Page 10

1 MR. DIAMOND: Unless Mr. Bernhardt can  
2 filter out any documents from those companies, what this  
3 means is, the date last for the last objector to file the  
4 last objection is really the first date that we can begin  
5 the document exchange.

6 I would think that under these  
7 circumstances, maybe what we ought to do is propose that  
8 we agree that seven days to object in the case of these  
9 outliers be the notice period rather than the 15. So, if  
10 they go out now, we can tee this up quickly. Obviously,  
11 if somebody needs more than seven days to sort out their  
12 difficulties, they can come back and ask Daron for some  
13 additional time, and we can discuss that.

21 Any objection that we just give seven  
22 days notice on the last couple of letters that go out.

23 MR. BERNHARDT: No objection from us,  
24 Your Honor.

## Teleconference

Page 11

1 JUDGE POPPITI: Well, if you think it's  
2 going to work given the holiday, then I will let you  
3 drive the train, so to speak.

4 And what I would like, because I think  
5 it's important for whatever order that gets entered, I  
6 would like you to draft the form of order that would be  
7 entered so that the third parties, I expect they're  
8 monitoring the docket, can see whatever language you  
9 choose.

10 MR. DIAMOND: I will undertake to draft  
11 something and shoot it by Mr. Bernhardt and Mr. Floyd.

12 JUDGE POPPITI: Should I look for that  
13 by date certain or just leave it to your energy to get it  
14 done and in due course?

15 MR. DIAMOND: We will probably have  
16 something to you by Monday.

17 JUDGE POPPITI: That's fine.

18 MR. DIAMOND: I will certainly have  
19 something to Daron by tomorrow.

20 JUDGE POPPITI: Okay. That's fine.

21 And I think what we may want to be sensitive to, knowing  
22 everyone's concern about getting this rolling and getting  
23 it accomplished by the date that the court has already  
24 set, should we discuss now whether there -- with respect

Teleconference

Page 12

1 to motion practice, are we satisfied that the process for  
2 motion practice should stay as it is in terms of the time  
3 frames involved, or should there be a separate schedule,  
4 if you will, and truncated?

5 MR. DIAMOND: With respect to the MDA  
6 issue?

7 JUDGE POPPITI: Yes. I anticipate that  
8 whatever motion practice there is, the way I would like  
9 to approach it, and this is best circumstance, is it  
10 opens and closes as quickly and efficiently as possible.  
11 And we set a date when there can be a telephonic hearing  
12 on those motions and a decision can be made during the  
13 course of the hearing with a form of order as we've  
14 contemplated in earlier discussion drafted by you, so  
15 that I don't have to take the time necessary to create  
16 the kind of record that the court would expect me to  
17 create with any motion on a finding and recommendation.

18 I mean, I don't know whether you want to  
19 discuss that now, or you want to give it some thought.  
20 What I don't want to do is to set forth in a process that  
21 is going to get in any sense bogged down. I don't want  
22 it to be.

23 MR. BERNHARDT: Your Honor, this is  
24 Daron Bernhardt.

Teleconference

Page 13

1 JUDGE POPPITI: Yes, please.

2 MR. BERNHARDT: What I would suggest is  
3 that we consult with AMD's counsel on this and get back  
4 to you. I think we actually are consulting with them on  
5 some other issues tomorrow and maybe we could put that on  
6 our agenda. But I would like the chance to think about  
7 it and to talk to them about it -- the proposal.

8 JUDGE POPPITI: That's fine. And,  
9 perhaps, if you all agree, then, I know you'll tell me  
10 that. If you can do it by Monday, that would be great  
11 because I think I would like to wrap whatever we do into  
12 the order that I'm going to be entering.

13 And if necessary, during your meet and  
14 confer, although I got a fairly busy schedule tomorrow,  
15 if you all put out a call for me, I'll find a way to get  
16 back to you.

17 MR. DIAMOND: We will put it on the  
18 agenda for us to discuss between ourselves.

19 JUDGE POPPITI: Next matter, please.

20 MR. DIAMOND: The November 13th letter  
21 from Paul Weiss' firm.

22 Let me say for the record, I am speaking  
23 on behalf of AMD only with respect to Fujitsu and NEC.

24 JUDGE POPPITI: Yes.

## Teleconference

Page 14

1 MR. DIAMOND: AMD is separately  
2 represented in connection with negotiations by two firms  
3 with respect to Sony, and one of Mr. Cottrell's partner's  
4 is handling the Toshiba negotiations.

5 I don't know, quite frankly, Your Honor  
6 what to make of this letter. Let me just give you the  
7 background.

16 JUDGE POPPITI: Yes. I'm aware of it,  
17 and I'm familiar with it.

18 MR. DIAMOND: The understanding was, we  
19 would use that collection of documents, which, obviously,  
20 would be very easy to collect and produce to narrow the  
21 universe of our request both in terms of custodians who  
22 we were interested in the subject matter.

23 We bore all of the expense for the  
24 copying of production of those materials. And we agreed

## Teleconference

Page 15

1 to discuss in the future an allocation of expense with  
2 respect to any further production.

11 And I had assumed that was because they  
12 are all hanging fire waiting for the outcome of our  
13 motion to compel. Intel's production of foreign conduct  
14 documents.

15 This letter, as far as I'm concerned, is  
16 wholly out of compliance with what we would have  
17 expected.

18 JUDGE POPPITI: It looks like an  
19 uninvited amicus.

20 MR. DIAMOND: Well, I won't put Dan and  
21 Daron on the spot, but I suspect it was invited.

22 JUDGE POPPITI: Okay.

23 MR. DIAMOND: But in any event, your  
24 Rule 3 of your June 28th procedures --

Teleconference

Page 16

1 JUDGE POPPITI: Yes.

2 MR. DIAMOND: -- is quite expressed that  
3 there has to be a meet and confer. If we're going to go  
4 to war with the Japanese OEM's over compliance, number  
5 one, we're happy to talk to them both about narrowing  
6 scope and assuming some portion of the costs of  
7 collecting documents as both we and Intel have done with  
8 respect to all of the subpoenaed parties. And Linda can  
9 comment more on those. But we haven't foreclosed that.

10 But it seems to me that if we're going  
11 to litigate this now, each of these can be litigated on a  
12 case-by-case basis. There's history behind each of the  
13 negotiations, and we're going to get into burden  
14 questions and cost allocation questions that may be  
15 rendered mute by -- well, that may well largely be  
16 disposed of by your ruling on our motion to compel  
17 Intel's production.

18 JUDGE POPPITI: Well, certainly that's  
19 going to be a significantly umbrella and it may be.

20 MR. DIAMOND: I think we can all agree  
21 that if we are not entitled to foreign conduct discovery,  
22 bearing on Intel's activities with respect to purely  
23 foreign companies, we are probably not entitled to it  
24 from the purely foreign companies themselves. I put a

Teleconference

Page 17

1 pin in that because companies like Sony are both domestic  
2 and foreign. They operate and purchase microprocessors  
3 for use here in the United States, as well as Asia.

4 JUDGE POPPITI: I understand.

5 MR. DIAMOND: But by and large, it seems  
6 to me that it is premature to go litigate these things.  
7 There is nothing raised with respect to the foreign  
8 conduct issues in this letter that's not already on the  
9 table by virtue of Intel's opposition.

10 And what I would propose is that we  
11 contact, through the appropriate counsel, each of these  
12 four parties and tell them that we have been instructed  
13 to meet and confer with respect to the burden issues  
14 before we litigate that. But in any event, it's your  
15 preference to decide the foreign conduct discovery issue  
16 in the context of the Intel motion, and then we will  
17 visit these as necessary.

18 JUDGE POPPITI: Any other comments?

19 MR. BERNHARDT: Daron Bernhardt for  
20 Intel, Your Honor.

21 I have two overall comments. One  
22 procedural and one substantive.

23 The Japan OEM's have moved the court and  
24 asked the court to address the jurisdictional decision

## Teleconference

Page 18

1 that Judge Farnan made and the impact that has on  
2 discovery as it applies to them.

3 And in their letter brief they state  
4 that Your Honor's decision on AMD's discovery motion to  
5 compel will have a great impact on them. They asked the  
6 court to consider that letter now, and they set out all  
7 of the reasons why they think it ought to be considered  
8 now.

9 Now, outside of their presence, what AMD  
10 is effectively doing is saying defer or strike their  
11 motion and we'll put it off. And, I think, that, with  
12 all due respect to Mr. Diamond, that procedurally that's  
13 not the appropriate way to go. Intel ought not to be in  
14 the position of speaking on behalf of the third parties  
15 simply because they agree with our interpretation of The  
16 Court FTAIA decision.

Teleconference

Page 19

1 day Wednesday of next week.

2 JUDGE POPPITI: And let me make an  
3 observation about that. I mean, it does seem to me that,  
4 if you will, an amicus submittal may serve some purpose.

5 And yet, at the same time, if I were to  
6 view this document as an amicus submittal, the document  
7 is filed against some background of those facts contained  
8 in the November 13th correspondence.

9 So, it really isn't, if you will, a  
10 traditional amicus focused squarely on the issue that you  
11 are teeing up for me. It does have, if you will, some  
12 legs of its own. And if that's the case, should there  
13 not, at least be requirement, if you all don't agree that  
14 this letter should stand, and they should be permitted to  
15 participate, if you will, in the fashion of an amicus, do  
16 you not agree that they should, at least, fulfill the  
17 requirement of meet and confer.

18 MR. BERNHARDT: Your Honor, I think,  
19 certainly, they could have a very quick conversation with  
20 AMD about whether AMD is willing to completely forego  
21 foreign conduct discovery. I think we know what the  
22 answer already to that is. And, therefore, it would be a  
23 proforma meet and confer, but the result would be that  
24 they want to participate and have their views heard, as

Teleconference

Page 20

1 Your Honor adjudicates AMD's motion to compel against  
2 Intel.

3 JUDGE POPPITI: And I'm not one for form  
4 over substance. And yet, at the same time, I would be  
5 very concerned at the front end of the process that I  
6 will be involved with, I would, by virtue of in action  
7 suggest that meet and confer isn't important because it  
8 will be.

9 MR. BERNHARDT: One way to deal with  
10 that, then, Your Honor, would be to ask AMD to try to  
11 have that meet and confer in the next couple of days and  
12 to report to the court some time next week about whether  
13 any resolution is possible.

14 If the answer is, no, the court can then  
15 take under submission this letter brief, have an amicus  
16 filing and use it for whatever value The Court deemed  
17 that it has. And the court could separate out those  
18 parts that are relevant to a filing as an amicus and  
19 those parts that the court thinks raised separate issues  
20 that could be deferred.

21 JUDGE POPPITI: Mr. Diamond.

22 MR. DIAMOND: Your Honor --

23 JUDGE POPPITI: And Mr. Diamond, before  
24 you respond, let me just make another observation.

Teleconference

Page 21

1                   If an amicus makes any sense, and help  
2    is always sensible, if it's helpful, I don't want to have  
3    to perform the task of parsing out those sections that  
4    are focused on the OEM's concerns themselves. If it's  
5    supposed to be a pure amicus and it is expected to be  
6    helpful, then I want it to be an amicus. I want it  
7    focused on the issue that is before me. At least it  
8    seems to me.

9                   MR. DIAMOND: And I was going to sort of  
10   raise the same objection to Mr. Bernhardt's last comment.  
11   What parts of this are amicus and what parts of these are  
12   motions.

13                  I am happy to begin the meet and confer  
14   process. Obviously, we are singularly focused in getting  
15   a reply done and to you on Tuesday, and given the holiday  
16   next week, this is not likely to happen until the  
17   following week.

18                  I have no objection if you treat the  
19   portion of these letters dealing with the purely legal  
20   issue of foreign conduct discovery and take those into  
21   account, if you think that there's anything worth taking  
22   into account.

23                  But a good portion of this letter is  
24   devoted to the burden arguments. And those ought to be

Teleconference

Page 22

1 the subject of meet and confer because nobody knows how  
2 burdensome this discovery is going to be because the  
3 parties haven't defined what they need to do and what AMD  
4 and Intel will pay for and what we won't pay for.

5 So, I think it's totally premature to  
6 litigate those issues.

7 And I'm sensitive to Mr. Bernhardt's  
8 comments about procedural niceties.

9 But on its face, this letter violates  
10 your June 28th order. And I'm happy to write a letter to  
11 you to that effect and ask you to strike it until such  
12 time.

13 JUDGE POPPITI: Yes. And I was just  
14 going to suggest that the procedural posture of the  
15 letter, if you will, at least places before me the  
16 argument being made on behalf of the OEM's.

17 And I think it's important for them to  
18 have some voice in the matter, other than the letter. At  
19 this juncture, we are on the phone without them. And it  
20 seems to me that for purposes of making any judgment,  
21 rounding out the record is important to do.

22 So, I will leave it to you, Mr. Diamond,  
23 to do whatever you think is appropriate with respect to  
24 this letter. And depending upon what you do, I think it

Teleconference

Page 23

1 may be important for me to convene, if necessary, a  
2 conference, so that I can have the OEM's voice or argue  
3 their position.

4 And I think it is also important that in  
5 having whatever you filed with me, not necessarily in  
6 conjunction with that, but I believe it is important for  
7 the OEM's to have a copy of this transcript insofar as it  
8 deals with the November 13th letter. And I would look to  
9 counsel to make sure that that occurs.

10 MR. DIAMOND: Why don't I attach that to  
11 the letter I will send you next week.

12 JUDGE POPPITI: Please.

13 MR. DIAMOND: I am not quite sure what  
14 time frames apply to this letter because the letter is  
15 not in conformance with your rules either in procedure or  
16 length.

17 JUDGE POPPITI: I understand what you're  
18 saying.

19 MR. DIAMOND: I don't know whether we're  
20 operating under the Delaware local rules, your rules, but  
21 we are not going to address the merits of this. We are  
22 simply going to address the procedural deficiencies, and  
23 I will attach the transcript.

24 And if Counsel for the OEM's want to

Teleconference

Page 24

1 have a hearing on the propriety of the motion in its  
2 current form, we can do that.

3 I will need until next week, because, as  
4 I said, I only represent AMD with respect to some of, but  
5 these not all of these OEM's, and I need to get the other  
6 Counsel on board. I will get that to you before you  
7 leave for the holidays.

8 JUDGE POPPITI: That's fine. What you  
9 are saying is Wednesday of next week, that's fine.  
10 That's fine with me.

11 MR. BERNHARDT: Your Honor, Darren  
12 Bernhardt.

13 Can I make one other point?

14 JUDGE POPPITI: Yes, please.

15 MR. BERNHARDT: We have a hearing  
16 scheduled, I believe, on November 29th. And it is quite  
17 clear that the third parties want to have their voice in  
18 adjudication of this motion and, therefore, we are under  
19 some time pressure here.

20 If AMD is going to say, Look, you should  
21 have had a meet and confer, and, therefore, your letter  
22 is procedurally inappropriate, again, the meet and confer  
23 is going to be proforma because AMD is not going to agree  
24 with the third parties position that no foreign conduct

Teleconference

Page 25

1 discovery should go forward.

2 So, if the court could impose some  
3 deadline on that meet and confer, that would give the  
4 parties an opportunity to refile before the hearing.

5 MR. DIAMOND: I totally object to that.

6 We are under orders from Judge Farnan to properly dispose  
7 of the foreign conduct discovery issue. We have adopted  
8 a schedule for that. This is going to be briefed by next  
9 Tuesday. It will be argued on the 29th. There is no  
10 right of these OEM's to inject themselves into that  
11 process, either on their own, or if, it was the case, by  
12 invitation of Intel.

13 We have enough lawyers on this dispute  
14 as it is and don't need another legion.

15 If the Japanese OEM's wanted to  
16 crystallize this issue in a time frame that would have  
17 paralleled the Intel motion, they certainly had every  
18 ability to do so and do so in an appropriate way.

19 I don't think that Mr. Bernhardt ought  
20 to shoehorn them in so that it's five against one instead  
21 of one against one.

22 JUDGE POPPITI: I expect the OEM's,  
23 through their able counsel, know how to serve up a  
24 request to participate in briefing -- an amicus briefing,

Teleconference

Page 26

1 if you will.

2                   Although, this letter, as I said,  
3 suggest that this is an uninvited amicus, there has been  
4 no request appropriately filed for them to participate.

5                   So, it was important for me to read the  
6 letter, for purposes of having this conversation. But I  
7 can say, at this juncture, I don't intend to do anything  
8 with that letter until I see what Mr. Diamond's submittal  
9 is going to be, responding, if you will, to same.

10                  Intel, if you choose, you can also file  
11 a simultaneous view, if you will, of that letter, and I  
12 will make some judgment as to whether the letter stands  
13 and whether there is even sufficient time to permit  
14 amicus filings.

15                  We're rolling toward a hearing date.

16 Your final brief is due next week. Again, I expect the  
17 OEM's have been monitoring the docket. So, it should be  
18 no surprise to them, and it appears not to be a surprise,  
19 if they know we're in briefing.

20                  I am not going to make any judgement  
21 with respect to this letter at this juncture. But I  
22 think you can hear my concerns about it.

23                  MR. SMALL: Your Honor, this is Dan  
24 Small. If I may interject something for the Class

Teleconference

Page 27

1 plaintiffs.

2 JUDGE POPPITI: Yes, please.

3 MR. SMALL: We have our next brief due  
4 in this process for the motion to compel on Tuesday. And  
5 we are working very hard to deal with the legal issues  
6 that have been raised by the motions to compel.

7 The letter that was submitted by the  
8 Japanense OEM's, in addition to raising that legal issue,  
9 raised factual and different legal issues relating to  
10 burden. And for us to be able to address that, we  
11 certainly could not do it by Tuesday.

12 JUDGE POPPITI: And I understand that.  
13 And that is why I say the letter certainly had some focus  
14 on the briefing that is soon to be closed before me. But  
15 it also had square and sharp focus on their own interest.  
16 And that's not what this briefing and what these issues  
17 are designed to do, or to address in this first round of  
18 briefing.

19 It may be that whatever decision I make  
20 impacts on the OEM's. But we are not going know that  
21 until a decision is issued. And I don't want to wrap in  
22 to this journey focus on the OEM's from their individual  
23 perspectives. That's not the purpose of this briefing.

24 MR. SMALL: Your Honor, for the Class

Teleconference

Page 28

1 plaintiffs, we may be able to ride the coattails of AMD's  
2 very able counsel.

3 But if we find it necessary to submit  
4 our own submission to you on Wednesday, can we do that?

5 JUDGE POPPITI: I did not mean to  
6 exclude you.

7 MR. HORWITZ: Your Honor, this is Rich  
8 Horwitz.

9 Having not been involved directly in any  
10 of the meet and confers in the past that the parties have  
11 had, I just wonder if it would be appropriate, based on  
12 what --

13 JUDGE POPPITI: Mr. Horwitz, you are  
14 cutting off again.

15 MR. HORWITZ: Somebody must have a  
16 Blackberry close to their phone.

17 It sounds like based on the conversation  
18 today, if a meet and confer happens, and Mr. Diamond  
19 hasn't suggested anything to the contrary, that it is  
20 going to be perfunctory. And I have no idea when it  
21 would happen, but I just hope it won't be delayed, if, in  
22 fact, it is just going to be perfunctory, so if the OEM's  
23 want to take a position, there won't be any efforts by  
24 the parties from here on out that would make that delay

Teleconference

Page 29

1 even further out, if you understand what I'm saying.

2 JUDGE POPPITI: I do. And what I would  
3 expect is, even understanding your respective positions,  
4 I certainly would not appreciate a discussion later on  
5 suggesting to me that the reason why we are having a late  
6 discussion is because a meet and confer that could have  
7 been accomplished in short order didn't occur.

8 I'm not going to push you -- I think it  
9 would be inappropriate for me to push to a meet and  
10 confer as a result of this November 13th letter. But  
11 there are issues raised in that November 13th letter that  
12 should be addressed. There should be a meet and confer  
13 and that may help round out the record that I need to  
14 deal with the substance or the process of a November 13th  
15 letter.

16 So, I would urge that that occurs as  
17 quickly as possible without directing it.

18 MR. DIAMOND: Your Honor, the third  
19 point concerns the status of the third-party  
20 negotiations. And I think I ought to let Linda talk  
21 about that because she and Dan have been principally  
22 involved in it.

23 JUDGE POPPITI: Please. Ms. Smith.

24 MS. SMITH: Yes, Your Honor. Basically,

Teleconference

Page 30

1 I think we've made considerable progress.

2 And what I would like to do is not go  
3 through on a third party by third party basis, but on  
4 several of the large OEM's, I think we're about to  
5 conclude agreements which will result in production  
6 finally.

7 But I would like at some point, perhaps,  
8 once we get past the foreign conduct briefing and hearing  
9 to actually take the list that we have provided to you  
10 and give you a quick summary of both the way we're  
11 addressing the negotiations in terms of we have a  
12 bifurcated approach.

13 One is, to designate custodians as a  
14 third party and search terms and limit the search to  
15 IMB's designated custodians, and within that have  
16 custodian search terms.

17 And then, the other piece, which is,  
18 perhaps, more germane to Intel and the Class Action  
19 Plaintiffs is what we call transactional data, which has  
20 to do with a very detailed series of questions about  
21 sales and pricing, et cetera, which are what we call  
22 corporate request.

23 And what we would like to do at some  
24 point is to go through the protocols on the way we've

Teleconference

Page 31

1 negotiated these, so you'll have a general understanding,  
2 unless Your Honor is desirous having a three-hour seminar  
3 on E-discovery and all of the issues involved, which I  
4 would have to get other forensic people from my firm to  
5 participate on my behalf.

6 JUDGE POPPITI: No. I am happy to do  
7 the general discussion. I've had pleasure of teaching  
8 some E-discovery courses. I haven't done one this year,  
9 but the general understanding will be good enough.

10 MS. SMITH: Otherwise, I am still  
11 pushing for the meeting in Maui.

12 JUDGE POPPITI: I will tell you what.  
13 If it's in Maui, we can be as specific as we need to be.

14 MS. SMITH: I think what the parties  
15 would like to do, once we get this briefing behind us is  
16 go through -- you know -- this is concluded. This is  
17 outstanding. This is an impasse. Just so you have a  
18 general sense of what's coming.

19 And I think that is something that Your  
20 Honor expressed a desire to understand before we get to  
21 this December 22nd motion practice commencement date so  
22 you are not surprised. And we can, perhaps, organize it  
23 into some groupings that makes sense in terms of the  
24 briefing if there remains to be a briefing to be done.

## Teleconference

Page 32

1 So far, we are making very good  
2 progress, and as I said, about to, it looks like,  
3 conclude deals with very -- agreements with very big  
4 players like IBM, HP and Dell.

5 JUDGE POPPITI: Great. That all makes  
6 sense. And I think I would leave it, certainly, to you  
7 to suggest when we do that. And I expect we will use one  
8 of our Thursdays for that purpose, correct?

9 MS. SMITH: Yes, Your Honor.

10 JUDGE POPPITI: Do you want to suggest a  
11 date now, or do you want to wait until all of your work  
12 is completed next week?

13 MS. SMITH: Yes. We don't have that  
14 much time. I think it should be either the first week of  
15 December, or the first session we have in December, or  
16 the second.

19 JUDGE POPPITI: I agree.

20 MS. SMITH: Then we will move on.

21 JUDGE POPPITI: That's good. Any other  
22 matters, then, please. Then, I will be looking for a  
23 form of order. And I am going to be expecting some  
24 submittal with respect to the November 13, 2006 letter.

Teleconference

Page 33

1 MR. DIAMOND: Then you will have both  
2 next week.

3 JUDGE POPPITI: That's great. Thank  
4 you, all. Have a pleasant, safe and plentiful  
5 Thanksgiving.

6 (Teleconference was concluded at,  
7 approximately, 11:50 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

Teleconference

Page 34

1 C E R T I F I C A T E

2 STATE OF DELAWARE:

3 :

3 NEW CASTLE COUNTY:

4 I, Gloria M. D'Amore, a Registered  
5 Professional Reporter, within and for the County and  
6 State aforesaid, do hereby certify that the foregoing  
7 Teleconference was taken before me, pursuant to notice,  
8 at the time and place indicated; that the statements of  
9 said parties was correctly recorded in machine shorthand  
10 by me and thereafter transcribed under my supervision  
11 with computer-aided transcription; that the  
12 Teleconference is a true record of the statements given  
13 by the parties; and that I am neither of counsel nor kin  
14 to any party in said action, nor interested in the  
15 outcome thereof.

16 WITNESS my hand and official seal this  
17 17th day of November A.D. 2006.

18



19  
20 GLORIA M. D'AMORE  
21 REGISTERED PROFESSIONAL REPORTER  
22 CERTIFICATION NO. 119-PS

23

24